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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ROBERT KUNA,

Plaintiff,

v.

JOSEPH SHALANT, A LAW
CORPORATION, a California
professional law corporation; JOSEPH
L. SHALANT; RONALD A. CHER;
BRIAN A. YAPKO; DARREN A.
MANIBOG; G. MONTY MANIBOG;
MANIBOG & MANIBOG LLP, a
California professional limited liability
partnership; MARK BERMAN,
M.D.; CRAIG JAMES BALL, M.D.;
JOHN F. REINISCH, M.D.;
CHILDRENS HOSPITAL LOS
ANGELES, a California corporation;
CAMDEN SURGERY CENTER OF
BEVERLY HILLS, INC., a
California corporation; and LESLYN
FLOWERS,

Defendants.

Case No. CV 08-03782

COMPLAINT FOR DAMAGES
FOR:

- (1) BREACH OF WRITTEN CONTRACT
- (2) FRAUD (SUPPRESSION OF FACTS)
- (3) FRAUD (SUPPRESSION OF FACTS)
- (4) CONSPIRACY TO INTERFERE WITH CONTRACT
- (5) CONSPIRACY TO DEFRAUD
- (6) FRAUD (INTENTIONAL MISREPRESENTATION)
- (7) FRAUD (NEGLIGENT MISREPRESENTATION)
- (8) INTERFERENCE WITH ECONOMIC ADVANTAGE
- (9) FRAUD (INTENTIONAL MISREPRESENTATION)
- (10) INVASION OF CONSTITUTIONAL RIGHT TO PRIVACY
- (11) VIOLATION OF CONFIDENTIALITY OF MEDICAL INFORMATION ACT
- (12) CONVERSION
- (13) CONVERSION
- (14) CONVERSION

1 Plaintiff Robert Kuna ("Plaintiff") alleges:

2 **JURISDICTION AND VENUE**

3 1. This Court has original jurisdiction under 28 U.S.C. §1332, in that
4 Plaintiff is a foreign resident with multiple foreign residences, and each of the
5 defendants herein are residents of the State of California. The matter in
6 controversy exceeds, exclusive of interest and costs, the sum of Seventy-Five
7 Thousand Dollars.

8 2. Venue is proper in this district because a substantial part of the
9 events or omissions giving rise to the claim occurred in this district.

10 **PARTIES**

11 3. Plaintiff is a foreign resident with multiple foreign residences.

12 4. Plaintiff is informed and believes, and thereon alleges, that at all
13 times herein mentioned, defendant Joseph Shalant, A Law Corporation (the
14 "Corporation"), was a professional law corporation organized and existing
15 under the laws of the State of California, duly registered with the State Bar of
16 California as a law corporation, with its principal place of business at 3699
17 Wilshire Boulevard, Suite 1290, Los Angeles, California 90010.

18 5. Plaintiff is informed and believes, and thereon alleges, that at all
19 times herein mentioned until May 21, 2005, defendant Joseph L. Shalant
20 ("Shalant") was an attorney at law duly licensed to practice by the State Bar of
21 California, at which latter date Shalant became ineligible to practice law, and
22 who was disbarred on January 13, 2006; that he was the agent and employee of
23 the Corporation and in doing the things herein alleged was acting within the
24 scope of such agency; and that with respect to all matters herein alleged was a
25 partner by estoppel of defendants Ronald A. Cher, Brian A. Yapko and Darren
26 A. Manibog.

27 6. Plaintiff is informed and believes, and thereon alleges, that at all
28 times herein mentioned, defendant Ronald A. Cher ("Cher") was an attorney at

1 law duly licensed to practice by the State Bar of California; that he was the
2 agent and employee of the Corporation and in doing the things herein alleged
3 was acting within the scope of such agency; and that with respect to all matters
4 alleged herein was a partner by estoppel of defendants Shalant, Brian A. Yapko
5 and Darren A. Manibog.

6 7. Plaintiff is informed and believes, and thereon alleges, that at all
7 times herein mentioned, defendant Brian A. Yapko ("Yapko") was an attorney
8 at law duly licensed to practice by the State Bar of California; that he was the
9 agent and employee of the Corporation and in doing the things herein alleged
10 was acting within the scope of such agency; and that with respect to all matters
11 alleged herein was a partner by estoppel of defendants Shalant, Cher and
12 Darren A. Manibog.

13 8. Plaintiff is informed and believes, and thereon alleges, that at all
14 times herein mentioned, defendant Darren A. Manibog ("Manibog") was an
15 attorney at law duly licensed to practice by the State Bar of California; that he
16 was the agent and employee of the Corporation and in doing the things herein
17 alleged was acting within the scope of such agency; and that with respect to all
18 matters alleged herein was a partner by estoppel of defendants Shalant, Cher
19 and Yapko. The Corporation, Shalant, Cher, Yapko and Manibog will
20 hereinafter be collectively referred to as the "Attorneys."

21 9. Plaintiff is informed and believes, and thereon alleges, that at all
22 times herein mentioned, defendant G. Monty Manibog ("Monty Manibog") was
23 an attorney at law duly licensed to practice by the State Bar of California, with
24 his principal place of business at 3699 Wilshire Boulevard, Suite 1290, Los
25 Angeles, California 90010. Plaintiff is further informed and believes, and
26 thereon alleges, that defendant Manibog & Manibog LLP ("Manibog &
27 Manibog") is a California professional limited liability partnership of which
28 Manibog and Monty Manibog are partners, with its principal place of business

1 at 3699 Wilshire Boulevard, Suite 1290, Los Angeles, California 90010.

2 10. Plaintiff is informed and believes, and thereon alleges, that at all
3 times herein mentioned, defendant Mark Berman, M.D. ("Berman") was duly
4 licensed to practice as a physician and surgeon by the California State Medical
5 Board and was an individual residing in the County of Los Angeles, State of
6 California.

7 11. Plaintiff is informed and believes, and thereon alleges, that at all
8 times herein mentioned, defendant Craig James Ball, M.D. ("Ball") was duly
9 licensed to practice as a physician and surgeon by the California State Medical
10 Board and was an individual residing in the County of Riverside, State of
11 California. Plaintiff is informed and believes, and thereon alleges, that Berman
12 and Ball conducted business under the name "Cosmetic Surgery Institute of
13 Palm Desert," and that with respect to all matters alleged herein, Ball was a
14 partner of Berman. Ball subsequently had his license to practice medicine
15 revoked by the California Medical Board.

16 12. Plaintiff is informed and believes, and thereon alleges, that at all
17 times herein mentioned, defendant John F. Reinisch, M.D. ("Reinisch") was
18 duly licensed to practice as a physician and surgeon by the California State
19 Medical Board and was an individual residing in the County of Los Angeles,
20 State of California.

21 13. Plaintiff is informed and believes, and thereon alleges, that
22 defendant Childrens Hospital Los Angeles ("Hospital") is now, and at all times
23 herein mentioned was, a corporation duly organized and existing under the laws
24 of the State of California, having its principal place of business in the City of
25 Los Angeles, State of California. Reinisch is employed by the Hospital.

26 14. Plaintiff is informed and believes, and thereon alleges, that
27 defendant Camden Surgery Center of Beverly Hills, Inc. ("Camden Surgery
28 Center") is now, and at all times herein mentioned was, a corporation duly

1 organized and existing under the laws of the State of California, having its
2 principal place of business in the City of Beverly Hills, State of California.

3 15. Plaintiff is informed and believes, and thereon alleges, that
4 defendant Leslyn Flowers ("Flowers") is now, and at all times herein
5 mentioned was, an individual residing in the County of Los Angeles, State of
6 California. Plaintiff is informed and believes, and thereon alleges, that during
7 the times mentioned herein, Flowers was initially an employee of the
8 Corporation and Shalant, and that at the time Plaintiff returned to the United
9 States as more fully alleged in paragraph 25 hereof, Flowers was an employee
10 of Yapko.

11 16. Unless the context otherwise requires, the Attorneys, Monty
12 Manibog, Manibog & Manibog, Berman, Ball, Reinisch, the Hospital, Camden
13 Surgery Center and Flowers will be referred to collectively as "Defendants"
14 and individually as a "Defendant."

15 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 17. On or about April 15, 2004, at Los Angeles, California, Plaintiff
17 and the Attorneys entered into that certain Medical Malpractice Contingency
18 Retainer Agreement (the "Retainer Agreement"), a true and correct copy of
19 which is annexed hereto as Exhibit "A" and is incorporated herein by this
20 reference. Plaintiff is informed and believes, and thereon alleges, that the
21 Attorneys are a partnership of attorneys and counselors at law, including one
22 professional corporation.

23 18. Plaintiff thereby retained and employed the Attorneys to represent
24 Plaintiff as Plaintiff's attorney at law for the purpose of filing and prosecuting a
25 claim for damages against Berman for medical malpractice, fraud and battery
26 (lack of informed consent) in connection with procedures performed, or
27 represented to have been performed, by Berman on May 19, 2003; August 18,
28 2003; and January 12, 2004. In a declaration dated January 22, 2008, Cher

1 | claims to have said to Plaintiff in a letter dated May 14, 2004, "Based on what
2 | I have seen and heard so far, you have tenable claims for medical malpractice,
3 | fraud, and lack of informed consent."

4 | 19. At such time and place Defendants accepted such employment and
5 | agreed to perform such services for Plaintiff.

6 | 20. At this time, the named principal among the Attorneys, Shalant,
7 | was the subject of a disciplinary proceeding before the State Bar of California,
8 | case no. 01-O-04627-AIN, in which, on September 30, 2003, the State Bar
9 | Court recommended two years' immediate suspension and four years'
10 | probation, among other discipline. Plaintiff was concerned that this proceeding
11 | might impair the Attorneys' ability to prosecute his case against Berman.

12 | 21. In response, Cher advised Plaintiff that Shalant had in fact been
13 | suspended from the practice of law; that the other Attorneys, namely, Cher,
14 | Yapko and Manibog, were in fact Plaintiff's lawyers; that Shalant's only
15 | participation in the Attorneys' cases was in conducting examinations at trial;
16 | that Cher had tried cases in the past, and could do so in the future; and that
17 | Shalant was in fact suspended, and was appealing the State Bar Court's decision
18 | to the California Supreme Court (which ultimately disbarred Shalant on January
19 | 13, 2006, based on repeated acts of moral turpitude). Cher then took Plaintiff
20 | to Yapko's office and introduced Yapko to Plaintiff as the Attorney responsible
21 | for legal research. Both reassured Plaintiff that they had contingency plans in
22 | the event Shalant could not practice.

23 | 22. Cher thereafter telephoned Plaintiff and suggested that he meet with
24 | Reinisch and requested that Reinisch open and "look at" Plaintiff's masses and
25 | objects in his abdomen and face. Cher also asked that Plaintiff get MRI images
26 | of his surgical wounds, scars, masses and objects. Plaintiff then met with
27 | Reinisch at his office at Defendant Hospital. In sworn testimony given on May
28 | 14, 2008, Shalant testified concerning Reinisch, "[I] knew him well I've

1 | been to his house. We have had good discussions on cases." Without
2 | Plaintiff's knowledge or consent, the Attorneys had secretly instructed Reinisch,
3 | in violation of the Business & Professions Code, not to make any
4 | contemporaneous notes or records of his examination of Plaintiff.

5 | 23. At the evaluation, Reinisch expressed to Plaintiff the opinion that
6 | Berman had, indeed, committed medical malpractice and other harms in respect
7 | of Plaintiff, specifically, but not limited to, Berman's negligent failure to treat
8 | Plaintiff's chronic acute pain. Based on this chronic pain Plaintiff was then
9 | experiencing, Reinisch recommended that Plaintiff schedule corrective surgery
10 | with him. Plaintiff paid Reinisch \$500.00 for the evaluation.

11 | 24. Plaintiff in fact had scheduled corrective surgery with Steven R.
12 | Cohen, M.D. ("Dr. Cohen") whose contemporaneous records and opinion
13 | favored Plaintiff's claim. Dr. Cohen stated in his report, "I have indicated to
14 | him [Plaintiff] that I would prefer to work through an attorney" Dr.
15 | Cohen had quoted Plaintiff a price of \$4,476.00 for this corrective surgery.
16 | Dr. Cohen thereafter called Plaintiff and said that Reinisch had telephoned him
17 | and had encouraged him to allow Reinisch to perform the surgery. This call by
18 | Reinisch was made without Plaintiff's knowledge or consent. Dr. Cohen
19 | believed that it was in Plaintiff's best interest to have the corrective surgery
20 | performed by Reinisch, because Reinisch had served as an expert witness
21 | against Berman in the past in actions brought by the Attorneys which had been
22 | successful. Dr. Cohen further suggested that since the trial would occur in Los
23 | Angeles, it was better for Plaintiff to undergo the corrective surgery under
24 | Reinisch. Plaintiff in good faith cooperated and on June 1, 2004, Reinisch
25 | performed the surgery at Defendant Camden Surgery Center, which surgery
26 | provided evidence of two batteries and other medical malpractice, specifically,
27 | two foreign objects placed into Plaintiff's body without his knowledge or
28 | consent, one of which was in fact responsible for Plaintiff's chronic acute pain